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UNCLAS SECTION 01 OF 02 LAGOS 000143

SIPDIS

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DEPT FOR AF/W
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E.O. 12958: N/A
TAGS: [ENRG](#) [EINV](#) [ECON](#) [NI](#)
SUBJECT: NIGERIA: AES CORPORATION TO PURSUE INTERNATIONAL
ARBITRATION

REF: A. 07 LAGOS 147

[1](#)B. 07 LAGOS 507

Sensitive But Unclassified; Business Propriety Information;
Handle Accordingly.

[1](#)1. (SBU) Summary: During a March 28 meeting with EconOffs, U.S. company AES Corporation said it will pursue international arbitration if the Government of Nigeria (GON) does not pay an owed USD 17.5 million and honor the terms of a power purchase agreement between AES and the Power Holding Company of Nigeria (PHCN). The Mission previously advocated on behalf of AES in 2006 and 2007 to the Ministry of Finance for non-payment by PHCN. AES Managing Director fears the Nigerian Presidential Committee on the Accelerated Expansion of the Electrical Power Sector has not done a thorough analysis of solutions to Nigeria,s power problem. He suspects a forthcoming recommendation for public private partnerships will result in the transfer of billions of dollars worth of turbines and other equipment to well-placed insiders. End Summary.

[1](#)2. (SBU) AES Corporation Managing Director Ahmer Nadeem met with Pol/Econ Section Chief and EconOff on March 28 to discuss the GON,s failure to pay more than USD 17.5 million in fees owed AES for power generated by the company. The USD 17.5 million is over 30 days due, and while the GON makes periodic payments, it continues to dispute the total amount. AES had obtained a one year waiver from its lenders to avoid drawing on a USD 60 million letter of credit it has with Citibank while attempting to resolve tax and other problems with the GON.

[1](#)3. (SBU) Nadeem believes the negotiations over the company,s tax exemption provision have reached a dead end. The company met with President Yar,Adua in July 2007, and the President said provisions of their contract providing for a 14 year tax exemption conflict with existing law which allows a maximum five year tax exemption. The President could not change the law for a single company and asked that they submit a proposal complying with current law. The company submitted a proposal to adjust its tariff upward and the GON hired the accounting firm KPMG to audit the company,s calculated tax liabilities. However, at the end of this protracted process, the Federal Inland Revenue Service told the company there was nothing it could do and referred the company back to PHCN where the dispute began. PHCN demanded that AES pay 50

percent of the tax and reduce its tariffs, terms which AES refused.

¶4. (SBU) Nadeem said the company planned to initiate international arbitration on or about April 14. AES has also sent a letter to President Yar, Adua requesting a meeting in early May to find a peaceful resolution to the dispute. On pursuing international arbitration, Nadeem believes the company's rights under the contract are clear, and the GON may be persuaded to pay the amounts in question when it realizes its case before the arbitrator is weak. He contended that the GON's desire to attract private investment in the power sector will act as an incentive for the GON to settle before there is an arbitration decision.

¶5. (SBU) Nadeem reported that the Presidential Committee on Accelerated Expansion of the Electrical Power Sector has already submitted its report without having seriously considered how adequate power could be achieved. The committee plans to fund the completion of the Nigerian Independent Power Project (NIPP) by raising USD 3.5 billion and engaging in public private partnerships. Nadeem underscored that it would be difficult at best to raise this large amount, particularly if the committee seeks funding from GE Capital with local banks providing bridge loans. Regarding public private partnerships, he posited that influential insiders have already been identified to take over the NIPP assets, including the 18 turbines purchased from GE, which will be the public sector contribution to the partnerships.

¶6. (SBU) AES representatives lamented that U.S. companies are criticized for their unwillingness to accept risks, but the GON fails to recognize that risks must be hedged. In a functioning market, the risk of getting enough fuel for a

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plant is hedged by the multiplicity of buyers and sellers. In Nigeria, where there is no functioning market, the government needs to back projects by providing risk guarantee schemes. Nadeem attributed the GON's overconfidence to the empty promises made by Chinese investors and to the ill-founded advice offered by local consultants.

¶7. (SBU) Comment: The Mission has been engaged in advocacy efforts on behalf of AES for several years. The GON routinely threatens non-payment and complains about the cost of the electricity generated by AES. We have consistently passed the message to the GON that contracts should be honored and that not paying AES will not improve Nigeria's image as a country with a difficult business climate. End comment.

¶8. (U) Embassy Abuja has cleared on this cable.
BLAIR